BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

LeRoy Koppendrayer	Chair
Ken Nickolai	Commissioner
Marshall Johnson	Commissioner
Phyllis Reha	Commissioner
Thomas Pugh	Commissioner

In the Matter of Northern States Power Company's Request for Approval of its 2005 Capital Structure

ISSUE DATE: March 15, 2005

DOCKET NO. E,G-002/S-04-1794

ORDER APPROVING 2005 CAPITAL STRUCTURE

PROCEDURAL HISTORY

On November 4, 2004, Northern States Power Company (NSP) filed a petition for approval of its 2005 capital structure and authorization to issue securities.

On February 23, 2005, the Minnesota Department of Commerce (the Department) filed comments recommending approval with conditions.

On March 1, 2005, NSP filed reply comments accepting the Department's proposed conditions. The filing also contained NSP's compilation of filing requirements that the Commission had imposed on NSP in prior orders. NSP asked to have its list supercede the requirements from the prior orders and apply to all future capital structure filings.

On March 10, the Commission met to consider this matter. At the hearing, NSP did not object to a Commission proposal to forego changes to its filing requirements.

FINDINGS AND CONCLUSIONS

I. BACKGROUND

Minnesota Statutes § 216B.49, subdivision 3, states:

> It shall be unlawful for any public utility organized under the laws of this state to offer or sell any security or, if organized under the laws of any other state or foreign country, to subject property in this state to an encumbrance for the purposes of securing the payment of any indebtedness unless the security issuance of the public utility shall first be approved by the commission. Approval by the commission shall be by formal written order.

On October 22, 2002, the Commission issued an Order in a docket investigating the financial relationship between NSP and NRG, an energy marketing affiliate. That Order directed NSP to –

1. file capital structures annually;
2. in future capital structure or security issuance filings, provide more specific explanations of the purpose for the security issuances than the explanation that funds will be used for general corporate purposes; and
3. address, as part of an annual capital structure or securities issuance filing, the appropriate cost of capital to apply to filings for the next 12 months.[1]

In addition, in an Order issued January 13, 2003 approving NSP's 2003 capital structure, the Commission stated:

> This approval is limited to securities issuances actually contained in the filing including: short-term debt not to exceed 15 percent of total capitalization, the replacement of maturing securities, and the replacement of outstanding long-term debt instruments with less expensive securities that will be replaced dollar-for-dollar, plus the associated fees and issuance expenses.[2]

The January 13, 2003 Order also required NSP to provide the following information:

1. monthly reports on NSP's actual year-to-date capital structure; and

2. monthly updates to its service quality plan for the rest of 2002 rather than annually as now required.

On March 25, 2004, the Commission issued NSP's most recent capital structure Order, maintaining NSP's filing requirements.[3]

---

[1] See *In the Matter of an Inquiry Into Possible Effects of Financial Difficulties at NRG and Xcel on NSP and its Customers and Potential Mitigation Measures*, Docket No. E,G-002/CI-02-1346, ORDER REQUIRING ADDITIONAL INFORMATION AND AUDIT (October 22, 2002).

[2] See *In the Matter of Northern State Power Company's Request for Approval of its 2003 Capital Structure Prior to Issuing Securities*, Docket No. E,G-002/S-02-1907, ORDER APPROVING CAPITAL STRUCTURE WITH LIMITATIONS (January 13, 2003).

[3] See *In the Matter of Northern States Power Company's Request for Approval of its 2004 Capital Structure Prior to Issuing Securities*, Docket No. E,G-002/S-03-1760, ORDER APPROVING 2004 CAPITAL STRUCTURE, AS MODIFIED (March 25, 2004).

II. NSP'S PETITION

NSP asked that the Commission issue an Order that would, until superceded by NSP's 2006 capital structure order, do the following:

1. approve NSP's proposed capital structure and total capitalization;
2. authorize NSP to enter into multi-year credit agreements and issue associated notes thereunder;
3. restore NSP's ability to issue securities within the approved capital structure;
4. grant NSP flexibility to use risk management instruments to reduce the cost of capital;
5. cancel certain obligations related to the financial inquiry of NSP's former energy marketing subsidiary, NRG; and
6. restate NSP's compliance requirements for future capital structure filings, and supercede prior requirements.

NSP requested approval of the following projected capital structure:

Northern States Power's Minnesota operating utility and relevant subsidiaries
Projected Capital Structure for December 31, 2005
(millions of dollars)

Common Equity	$2,191	50.1%
Trust-Owned Preferred Securities	0	0.0%
Long-Term Debt	2,117	48.4%
Short-Term Debt	64	1.5%
TOTAL DEBT	$2,181	49.1%
TOTAL CAPITALIZATION	$4,372	100.0%

Beyond seeking approval of its projected capital structure, NSP requested a contingency authorization to secure an additional $528 million in total capitalization (12 percent above the projected level), for a total capitalization not to exceed $4,900 million. NSP asked for authorization for short-term debt not to exceed 15 percent of total capitalization and a 10 percent range around NSP's proposed equity ratio (45.09 percent to 55.11 percent). Moreover, NSP requested authority to exceed these limits for up to 60 days.

As part of this request, NSP seeks a variance from Minnesota Rules part 7825.1000, subpart 6, to allow NSP to treat borrowings under multi-year credit agreements as short-term debt.

NSP also requested permission to use risk management instruments that qualify for hedging account treatment under Statement of Financial Accounting Standards (FSAS) Statement No. 133 when appropriate to provide an economically efficient means of managing price, duration or interest-rate risk on securities.

NSP requested relief from some filing requirements that the Commission had imposed on NSP as part of the analysis of NSP's financial relationship to NRG. In addition, NSP asked to have other obligations restated, replacing the collection of Commission orders from which these obligations arose.

III. THE DEPARTMENT'S RECOMMENDATION

The Department recommended that the Commission approve most of NSP's request.

Based on its analysis, the Department concluded that NSP's proposed capital structure for 2005 is appropriate for maintaining NSP's financial viability. The Department stated that the requested contingencies are reasonable because they would allow NSP needed financial flexibility while maintaining its financial viability. According to the Department's analysis, the benefits of revolving multi-year credit agreements warrant varying the Commission's rules to permit NSP to treat such borrowing as short-term debt, provided that NSP report on how often such transactions are used, the amounts involved, the advantaged gained in lower rates and avoided financing costs, and the intended uses of the financing. The Department regarded NSP's request for security issuances for 2005 as reasonable, provided that they are kept within the proposed limits. Similarly, the Department concludes that is reasonable for NSP to use risk-managing transactions provided that they meet the standards of SFAS No. 133, and that NSP make appropriate reports in its next capital structure filing.

Regarding NSP's request for relief and restatement of obligations that the Commission has placed on NSP in prior orders, the Department expresses no objection. The Department agreed that certain reporting obligations regarding NSP's former affiliate NRG may no longer be warranted. But the Department noted that NSP had not offered a specific proposal for how its reporting obligations should be restated.

IV. NSP'S RESPONSE TO THE DEPARTMENT'S RECOMMENDATIONS

As noted above, on March 1, 2005, NSP responded to the Department's recommendations. In its reply, NSP agreed to the Department's proposed conditions for approval. NSP also offered a specific proposal for restating its capital structure filing requirements. Finally, NSP asked that the Commission act on its request by March 15, 2005, to facilitate the negotiation and marketing of its proposed multi-year credit arrangements.

V. COMMISSION ANALYSIS AND ACTION

Based on the record, especially the Department's analysis, the Commission is generally persuaded to accept the Department's reasonable recommendations. In particular, the Commission is persuaded to vary Minnesota Rules part 7825.1000, subpart 6, to allow NSP to treat borrowings under multi-year credit agreements as short-term debt.

Commission rules may be varied where enforcing the rule would impose an excessive burden, granting the variance would not harm the public interest, and granting the variance would not conflict with other legal standards. Minn. Rules part 7829.3200. In this case, NSP reported that multi-year contracts have become more common in the utility industry and accepted by credit rating agencies, and that they may help reduce transaction costs for borrowing; these benefits would be lost if the Commission did not vary its rule. Any threat to the public interest posed by such borrowing is mitigated by the limits placed on NSP's capital structure generally in this Order, as well as the annual reporting NSP will make in future capital structure filings. Finally, there are no legal prohibitions on granting NSP's request. Given these circumstances, the Department concluded that granting the variance will serve the public interest. The Commission agrees.

The tight timeline required to facilitate NSP's multi-year credit transaction, however, does not afford adequate time to evaluate NSP's proposed changes and restatement of its filing requirements. At hearing NSP did not object to deferring consideration of these changes to the future. The Commission finds this to be a reasonable way to proceed, and will retain the existing filing requirements in the meantime.

Accordingly, the Commission will approve NSP's 2005 capital structure as specified in the Ordering paragraphs and defer any changes to NSP's existing filing requirements.

ORDER

1. The Commission hereby –

    A. approves the proposed 2005 capital structure of Northern States Power Company (NSP) effective until the Commission issues a 2006 capital structure order;

    B. approves a contingency range of -/+ 10 percent around the equity ratio of 50.1 percent (i.e., a range of 45.09 to 55.11 percent);

    C. approves NSP's short-term debt issuances not to exceed 15 percent of total capitalization at any time while the 2005 capital structure is in effect;

    D. approves a total capitalization contingency of $528 million (*i.e.*, a total capitalization of $4,900 million);

E. authorizes NSP to enter into multi-year credit agreements and issue associated notes thereunder, but requires NSP to report on the use of such facilities including -

- how often they are used,
- the amount involved,
- the advantages gained in lower rates and avoided financing costs, and
- the intended uses of the financing;

F. approves NSP's request to issue securities provided that NSP remains within the contingency ranges or does not exceed them for more than 60 days; and

G. approves NSP's flexibility to use risk management instruments that qualify for hedge accounting treatment under Statement of Financial Accounting Standards Statement No. 133.

This approval is limited to securities issuances actually contained in NSP’s filing.

2. Minnesota Rules part 7825.1000, subpart 6, is varied to allow NSP to treat borrowings under multi-year credit agreements as short-term debt.

3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

(S E A L)

This document can be made available in alternative formats (i.e., large print or audio tape) by calling (651) 297-4596 (voice), or 1-800-627-3529 (MN relay service).